

**PROFESSIONAL SERVICES AGREEMENT WITH  
C.W. DRIVER  
FOR CITY HALL AND PARK MASTER PLAN PROJECT -  
PROGRAM MANAGEMENT SERVICES**

**THIS AGREEMENT** is made and entered into as of this 13th day of January, 2009, by and between the **CITY OF NEWPORT BEACH**, a Municipal Corporation ("**City**"), and **C.W. DRIVER**, a California Corporation, whose address is 15615 Alton Parkway, Suite 150, Irvine CA 92618 ("**Consultant**"), and is made with reference to the following:

**RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City is planning to design and construct the new City Hall and Park Master Plan Project.
- C. City desires to engage Consultant to manage design and construction of the new City Hall and Park Master Plan Project ("Project").
- D. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- E. The principal member of Consultant for purposes of Project, shall be John Thornton, Vice President.
- F. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

**1. TERM**

The term of this Agreement shall commence on the above written date, and shall terminate on the 31st day of May, 2009 unless terminated earlier as set forth herein.

**2. SERVICES TO BE PERFORMED**

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference. The City may elect to delete certain tasks of the Scope of Services at its sole discretion.

### 3. TIME OF PERFORMANCE

Time is of the essence in the performance of services under this Agreement and the services shall be performed to completion in a diligent and timely manner. The failure by Consultant to perform the services in a diligent and timely manner may result in termination of this Agreement by City.

Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

3.1 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.2 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, fax, hand-delivery or mail.

### 4. COMPENSATION TO CONSULTANT

City shall pay Consultant for the services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all work performed in accordance with this Agreement, including all reimbursable items (up to \$10,000.00) and subconsultant fees, shall not exceed **Two Hundred Thirty-Three Thousand, Six Hundred and Sixty Dollars and no/100 (\$233,660.00)** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.1 Consultant shall submit monthly invoices to City describing the work performed the preceding month. Consultant's bills shall include the name of the person who performed the work, a brief description of the services performed and/or the specific task in the Scope of Services to which it relates, the date the services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City staff.

4.2 City shall reimburse Consultant only for those costs or expenses specifically approved in this Agreement, or specifically approved in writing in advance by City. Unless otherwise approved, such costs shall be limited and include nothing more than the following costs incurred by Consultant:

- A. The actual costs of subconsultants for performance of any of the services that Consultant agrees to render pursuant to this Agreement, which have been approved in advance by City and awarded in accordance with this Agreement.
- B. Approved reproduction charges.
- C. Actual costs and/or other costs and/or payments specifically authorized in advance in writing and incurred by Consultant in the performance of this Agreement.

4.3 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

## 5. PROJECT MANAGER

Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated **William Hahn** to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

If Consultant is performing inspection or construction management services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. Consultant's cellular phone number will be provided to City.

## 6. ADMINISTRATION

This Agreement will be administered by the **Public Works Department**. Stephen G. Badum, Public Works Director, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his/her authorized representative shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

## **7. CITY'S RESPONSIBILITIES**

In order to assist Consultant in the execution of its responsibilities under this Agreement, City agrees to, where applicable:

- A. Provide access to, and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's work schedule.
- B. Provide blueprinting and other services through City's reproduction company for bid documents. Consultant will be required to coordinate the required bid documents with City's reproduction company. All other reproduction will be the responsibility of Consultant and as defined above.
- C. Provide usable life of facilities criteria and information with regards to new facilities or facilities to be rehabilitated.

## **8. STANDARD OF CARE**

- 8.1 All of the services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the services required by this Agreement, and that it will perform all services in a manner commensurate with community professional standards. All services shall be performed by qualified and experienced personnel who are not employed by City, nor have any contractual relationship with City. By delivery of completed work, Consultant certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the professional standard of care.
- 8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force in effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.
- 8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's work promptly, or delay or faulty performance by City, contractors, or governmental agencies.
- 8.4 The term Construction Management or Construction Manager does not imply that Consultant is engaged in any aspect of the physical work of construction contracting. Consultant shall not have control over or be in charge of and shall not be responsible for the project's design, City's project contractor ("Contractor"), construction means, methods,

techniques, sequences or procedures, or for any health or safety precautions and programs in connection with the work. These duties are and shall remain the sole responsibility of the Contractor. Consultant shall not be responsible for the Contractors' schedules or failure to carry out the work in accordance with the contract documents. Consultant shall not have control over or be responsible for acts or omissions of City, Design Engineer, Contractor, Subcontractors, or their Agents or employees, or of any other persons performing portions of the work.

#### **9. HOLD HARMLESS**

To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any work performed or services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

#### **10. INDEPENDENT CONTRACTOR**

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance or to

exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the services.

**11. COOPERATION**

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the work to be performed. City agrees to cooperate with the Consultant on the Project.

**12. CITY POLICY**

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

**13. PROGRESS**

Consultant is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

**14. INSURANCE**

Without limiting Consultant's indemnification of City, and prior to commencement of work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to City.

- A. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by City's Risk Manager prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.
- B. Signature. A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.
- C. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

D. Coverage Requirements.

- i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his or her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (10 calendar days written notice of non-payment of premium) prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.
- ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement, or the general aggregate limit shall be at least twice the required occurrence limit.
- iii. Automobile Liability Coverage. Consultant shall maintain automobile insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
- iv. Professional Errors and Omissions Insurance. Consultant shall maintain professional errors and omissions insurance, which covers the services to be performed in connection with this Agreement in the minimum amount of ten million dollars (\$10,000,000).

E. Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:

- i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant.
- ii. This policy shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents

and volunteers as respects to all claims, losses, or liability arising directly or indirectly from the Consultant's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.

- iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- iv. The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.
- v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.
- vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days (10 calendar days written notice of non-payment of premium) written notice has been received by City.

F. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claim made or suit instituted arising out of or resulting from Consultant's performance under this Agreement.

G. Additional Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

## **15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS**

Except as specifically authorized under this Agreement, the services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

## **16. SUBCONTRACTING**

City and Consultant agree that subconsultants may be used to complete the work outlined in the Scope of Services. The subconsultants authorized by City to



perform work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. The City is an intended beneficiary of any work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the City. Except as specifically authorized herein, the services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

#### **17. OWNERSHIP OF DOCUMENTS**

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents to City upon prior written request.

Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

#### **18. COMPUTER DELIVERABLES**

All written documents shall be transmitted to City in the City's latest adopted version of Microsoft Word, Adobe, and Excel.

#### **19. CONFIDENTIALITY**

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

#### **20. OPINION OF COST**

Any opinion of the construction cost prepared by Consultant represents his/her judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over

competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to City.

**21. RECORDS**

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

**22. WITHHOLDINGS**

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

**23. ERRORS AND OMISSIONS**

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this paragraph is intended to limit City's rights under the law or any other sections of this Agreement.

**24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS**

City reserves the right to employ other Consultants in connection with the Project.

**25. CONFLICTS OF INTEREST**

The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially

affected by the work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

## **26. NOTICES**

All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Stephen Badum, Public Works Director  
Public Works Department  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, CA, 92663  
Phone: 949-644-3311  
Fax: 949-644-3318

All notices, demands, requests or approvals from CITY to Consultant shall be addressed to Consultant at:

Attention: John Thornton, Vice President  
C.W. Driver  
15615 Alton Parkway, Suite 150  
Irvine CA, 92618  
Phone: 949-261-5100  
Fax: 949-261-5167

## **27. TERMINATION AND DISPUTE RESOLUTION**

### **27.1 TERMINATION**

In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default,

more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving seven (7) calendar days prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

## **27.2 STEPPED DISPUTE RESOLUTION**

In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, besides a default as set forth in Section 27.1, the City and the Consultant agree to attempt to resolve such disputes in the following manner:

First, the parties agree to attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party within ten (10) calendar days of being notified of the dispute.

Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining disputes by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties within thirty (30) calendar days after the failure to resolve the dispute by direct negotiation.

All parties agree that Consultant shall be required to submit a Tort Claim in conformance with the Tort Claims Act (Government Code Section 900 *et seq.*) and that this Section does not alter the Tort Claims Act requirements or toll any time limitations or statute of limitations set forth in the Tort Claims Act.

## **28. COMPLIANCE WITH ALL LAWS**

Consultant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

**30. INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

**31. CONFLICTS OR INCONSISTENCIES**

In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

**32. INTERPRETATION**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

**33. AMENDMENTS**

This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

**34. SEVERABILITY**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

**35. CONTROLLING LAW AND VENUE**

The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

**36. EQUAL OPPORTUNITY EMPLOYMENT**

Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first written above.

**APPROVED AS TO FORM:**

*Am C. Han*  
City Attorney  
for the City of Newport Beach

**CITY OF NEWPORT BEACH,**  
A Municipal Corporation

By: *[Signature]*  
Mayor  
for the City of Newport Beach

**ATTEST:**

By: *Leilani L. Brown*  
Leilani Brown,  
City Clerk



**CONSULTANT:**

By: *[Signature]*  
(Corporate Officer)

Title: President

Print Name: Dana Roberts

By: *[Signature]*  
(Financial Officer)

Title: Chief Financial Officer

Print Name: Bessie Kouvara

Attachments:      Exhibit A – Scope of Services  
                         Exhibit B – Schedule of Billing Rates

# C.W. Driver

BUILDERS SINCE 1919

15615 Alton Parkway  
Suite 150  
Irvine, CA 92618  
Fax 949.261.5167  
Telephone 949.261.5100

January 7, 2009

Mr. Steve G. Badum  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92658-8915

**Re: City Hall Master Planned Facility  
Program Management Services Fee Proposal**

Dear Steve:

C. W. Driver is please to submit our fee proposal to provide Program Management Services through the Concept Phase of the Newport Beach City Hall Master Planned Facility project for your consideration. We are excited about this opportunity to work with the City of Newport Beach and look forward to a very successful project.

Our proposed fee of \$223,660 is a Not-to-Exceed price for services through the Concept Phase of the Project as per the following:

CONCEPT PHASE EXECUTIVE SUMMARY:		
Project / Program Management Oversight & Support	47%	105,460
Constructability Review	2%	5,560
Scheduling	2%	5,120
Estimating / Budgeting / Value Engineering	42%	93,168
BIM Manager	2%	5,280
Clerical	4%	9,072
<b>TOTAL</b>	<b>100%</b>	<b>\$223,660</b>

C. W. Driver proposes to provide full service program management services through the Concept Design Phase including:

- a. Develop conceptual estimate based upon Architect's concept design
- b. Management of City's Architect, Bohlin, Cywinski, Jackson (BCJ)
- c. Provide, maintain and distribute milestone preconstruction schedule
- d. Constructability Review
- e. Identify potential cost increasing elements of the project
- f. Provide potential value engineering suggestions



- g. Use of BIM technology for design analysis
- h. Facilitate needs assessment information
- i. Schedule and conduct internal team meetings
- j. Develop regular reporting methods for Owner
- k. Attendance to all required project meetings and committee meetings
- l. Facilitate information process to designated parties

Please know that we are committed to the total success of this project and look forward to work with the City of Newport Beach and the Design Teams.

Sincerely,



Bruce Curry  
Project Executive

C: John Thornton, Vice President of Operations  
Robert Shafer, Chief Estimator  
William Hahn, Program Manager  
City Attendees at today's meeting

Attachments: Exhibit B – CWD Management Rates & Reimbursables





C. W. DRIVER

**MANAGEMENT RATES & REIMBURSABLES**

EFFECTIVE: JANUARY - JUNE, 2009

LABOR CLASSIFICATION	RATE
ACCOUNTING	84.00
ASSISTANT ESTIMATOR	82.00
ASSISTANT PROJECT MANAGER	139.00
ASSISTANT SUPERINTENDENT	109.00
BIM MANAGER	132.00
CARPENTER	102.00
CARPENTER FOREMAN	107.00
CLERICAL	81.00
CONSTRUCTABILITY REVIEWER	139.00
ESTIMATOR/COST ENGINEER	148.00
FIELD SUPERINTENDENT	157.00
GENERAL SUPERINTENDENT	195.00
IT SUPPORT	107.00
LABORER	84.00
LABORER FOREMAN	88.00
PROJECT ENGINEER	83.00
PROJECT EXECUTIVE / CHIEF ESTIMATOR	195.00
PROJECT (PROGRAM) MANAGER	165.00
SAFETY OFFICER	104.00
SCHEDULER	128.00
SENIOR ESTIMATOR	170.00
SENIOR PROJECT ENGINEER	128.00
SENIOR PROJECT MANAGEMENT	171.00
TRUCKING / DELIVERIES	69.00

~~Above rates apply to standard workweek hours. Additional overtime costs will apply to hourly employees.~~

~~The above rates will be charged including an increase of 6% per year in subsequent calendar years.~~

**Management Rates:**

Management Rates Include all wages, workers compensation insurance costs, fringe benefits and payroll taxes, office supplies and expenses, mobile phone costs, project staff computers and software, main office overhead, and profit

**Reimbursable Expenses:**

Reimbursable expenses will be reimbursed at rate of cost plus 10%. Typical reimbursement costs consist of the following: Travel and subsistence, mileage, Additional Program Management Services not inclusive of this Agreement, Outside Consultants, printing costs, postage and mail delivery charges, Permits and Fees, Testing and Inspections, Payment and Performance Bonds

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

10/31/2009

DATE (MM/DD/YYYY)

1/21/2009

**PRODUCER** Lockton Insurance Brokers, LLC  
725 S. Figueroa Street, 35th Fl.  
CA License #0F15767  
Los Angeles 90017  
(213) 689-0065

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**INSURED** C. W. Driver Contractors  
1018307 468 N. Rosemead Blvd.  
Pasadena CA 91107

**INSURERS AFFORDING COVERAGE****NAIC #**

INSURER A: Arch Insurance Company

11150

INSURER B: American Guarantee and Liability Insurance Company

26247

INSURER C:

INSURER D:

INSURER E:

THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER AND THE CERTIFICATE HOLDER.

**COVERAGES** CWCON01 C6

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X		GENERAL LIABILITY	71PKG2236105	10/31/2008	10/31/2009	EACH OCCURRENCE	\$ 1,000,000
			X COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
			CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
			GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COM/OP AGG	\$ 2,000,000
A			AUTOMOBILE LIABILITY	71PKG2236105	10/31/2008	10/31/2009	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
			X ANY AUTO				BODILY INJURY (Per person)	\$ XXXXXXXX
			ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$ XXXXXXXX
			SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$ XXXXXXXX
							AUTO ONLY - EA ACCIDENT	\$ XXXXXXXX
							OTHER THAN AUTO ONLY. EA ACC. AGG	\$ XXXXXXXX
B			EXCESS/UMBRELLA LIABILITY	AUC-5942253-00	10/31/2008	10/31/2009	EACH OCCURRENCE	\$ 25,000,000
			X OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 25,000,000
			DEDUCTIBLE <input checked="" type="checkbox"/> UMBRELLA FORM					\$ XXXXXXXX
			RETENTION \$					\$ XXXXXXXX
A			WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	71WC12236005	10/31/2008	10/31/2009	X WC STATUTORY LIMITS	OTH-ER
			ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <b>NO</b>				E.L. EACH ACCIDENT	\$ 1,000,000
			If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
			OTHER				E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

Re: City Hall and Park Master Planned Project: 19.8 acre site located from Corona del Mar Plaza to the OCTA Transportation Facility, between Avocado Avenue and MacArthur Boulevard (adjacent to the City Library at 1000 Avocado Avenue), City of Newport Beach, its elected or appointed officers, officials, employees, agents and volunteers are Additional Insured to the extent provided by the policy language or endorsement issued or approved by the insurance carrier. Coverage provided is primary and non-contributory. Waiver of Subrogation applies per attached endorsement(s).

**CERTIFICATE HOLDER**

10422348

Steve Badum  
Director of Public Works  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach CA 92658-8915

**CANCELLATION**

[M77357] [M66500] [M74061]

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED - AUTOMATIC STATUS WHEN REQUIRED BY A  
CONSTRUCTION AGREEMENT WITH YOU - COMPLETED OPERATIONS -  
PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

Section II - Who is an "Insured" is amended to include as an insured any person or organization for whom you are performing operations when you are specifically required by a written construction contract or agreement with such person or organization to include them as an additional insured on your policy and provide coverage for such additional insured only for liability arising out of:

- i) "your work" at the location designated; or
- ii) The "products completed operations hazard."

Coverage afforded to these additional insured parties will be primary to, and non-contributory with, any other insurance available to that person or organization.

All other terms and conditions of this Policy remain unchanged.

Policy Number: 71PKG2236105

Named Insured: C.W. Driver Contractors

This endorsement is effective on the inception date of this Policy unless otherwise stated herein:

Endorsement Effective Date: 10/31/2008

00 ML0019 00 08 06

Page 1 of 1

**POLICY NUMBER: 71PKG2236105**

**COMMERCIAL GENERAL LIABILITY  
CG 24 04 10 93**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name of Person or Organization:**

WAIVER OF SUBROGATION APPLIES WHERE REQUIRED BY WRITTEN AGREEMENT WITH OUR NAMED INSURED AS LONG AS THE REQUEST OCCURS PRIOR TO A LOSS.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section **IV** - COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition to the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of you ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

**CG 24 04 10 93**

**Page 1 of 1**

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY WC 04 03 06**

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-  
CALIFORNIA**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the schedule.

The additional premium for this endorsement shall be INCL % of the California workers' compensation premium otherwise due on such remuneration.

**SCHEDULE**

**PERSON OR ORGANIZATION**

**JOB DESCRIPTION**

**ANY PERSON OR ORGANIZATION WHERE  
WAIVER OF OUR RIGHT TO RECOVER IS  
REQUIRED BY WRITTEN CONTRACT WITH  
SUCH PERSON OR ORGANIZATION**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: **10-31-2008** Policy No. **71WC12236005** Endorsement No.

Insured **C.W. DRIVER CONTRACTORS**

Premium \$ **INCL**

Insurance Company: **ARCH INSURANCE COMPANY**

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From the WCIRB's California Worker's Compensation Insurance Forms Manual 1999

Fax #: \_\_\_\_\_

## CERTIFICATE OF INSURANCE CHECKLIST

### City of Newport Beach

This checklist is comprised of requirements as outlined by the City of Newport Beach.

Date Received: 2/23/09 Dept./Contact Received From: Shauna Oyler  
Date Completed: 2/23/09 Sent to: Shauna Oyler By: Jessica Scherer  
Company/Person required to have certificate: C.W. Driver

#### I. GENERAL LIABILITY

- A. INSURANCE COMPANY: Arch Insurance Company
- B. AM BEST RATING (A: VII or greater): AXV
- C. ADMITTED Company (Must be California Admitted):  
Is Company admitted in California? ☒ Yes ☐ No
- D. LIMITS (Must be \$1M or greater): What is limit provided? \$1M Each Occ/\$2M Agg
- E. PRODUCTS AND COMPLETED OPERATIONS (Must include): Is it included? ☒ Yes ☐ No
- F. ADDITIONAL INSURED WORDING TO INCLUDE (The City its officers, officials, employees and volunteers): Is it included? ☒ Yes ☐ No
- G. PRIMARY & NON-CONTRIBUTORY WORDING (Must be included): Is it included? ☒ Yes ☐ No
- H. CAUTION! (Confirm that loss or liability of the named insured is not limited solely by their negligence) Does endorsement include "solely by negligence" wording? ☐ Yes ☒ No
- I. NOTIFICATION OF CANCELLATION: Although there is a provision that requires notification of cancellation by certified mail; per Lauren Farley, the City will accept the endeavor wording.

#### II. AUTOMOBILE LIABILITY

- A. INSURANCE COMPANY: Arch Insurance Company
- B. AM BEST RATING (A: VII or greater) AXV
- C. ADMITTED COMPANY (Must be California Admitted):  
Is Company admitted in California? ☒ Yes ☐ No
- D. LIMITS (Must be \$1M min. BI & PD and \$500,000 UM):  
What is limits provided? \$1,000,000
- E. ADDITIONAL INSURED WORDING TO INCLUDE (The City its officers, officials, employees and volunteers): Is it included? ☐ Yes ☐ No
- F. PRIMARY & NON-CONTRIBUTORY WORDING (For Waste Haulers only):  
Is it included? N/A ☐ Yes ☐ No
- G. NOTIFICATION OF CANCELLATION: Although there is a provision that requires notification of cancellation by certified mail; per Lauren Farley, the City will accept the endeavor wording.

III. WORKERS' COMPENSATION

- A. INSURANCE COMPANY: Arch Insurance Company
- B. AM BEST RATING (A: VII or greater): AXV
- C. LIMITS: Statutory
- D. WAIVER OF SUBROGATION (To include): Is it included? ☒ Yes ☐ No

**HAVE ALL ABOVE REQUIREMENTS BEEN MET?**

☒ Yes ☐ No

**IF NO, WHICH ITEMS NEED TO BE COMPLETED?**

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Agreement and Insurance documents - Message (Rich Text)

Message Insert Options Format Text

Arial 14 A A B I U Address Book Check Names Follow Up Spelling

Clipboard Basic Text Names Include Options Proofing

To: whahn@owdriever.com

From:

Subject: Agreement and Insurance documents

I am still holding the agreement awaiting the insurance documents. I am unable to have the agreement executed by the City until I receive approval of the documents. I am also unable to pay any invoices. Please let me know when I can expect receipt of these documents.

Thanks

Shauna Oyler  
Public Works Specialist  
City of Newport Beach  
949-644-3311



**CITY OF NEWPORT BEACH  
CITY COUNCIL STAFF REPORT**

Agenda Item No. S-34  
January 13, 2009

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Public Works Department  
Stephen Badum  
[sbadum@city.newport-beach.ca.us](mailto:sbadum@city.newport-beach.ca.us)  
949-644-3311

**SUBJECT: CITY HALL AND PARK MASTER PLAN PROJECT - APPROVAL OF  
PROFESSIONAL SERVICES AGREEMENT WITH CW DRIVER FOR  
PROGRAM MANAGEMENT SERVICES**

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**RECOMMENDATIONS:**

Approve a Professional Services Agreement with CW Driver, of Irvine, California, for Pre-Design Phase 1 program management services at a contract price of \$233,660 and authorize the Mayor and the City Clerk to execute the Agreement.

**DISCUSSION:**

**Pre-Design Phase 1**

The level of complexity and importance of the City Hall and Park Project requires dedicated program management and specialized expertise. With the current demands on staff associated with the City's aggressive capital improvement program, it was determined that hiring contract professional services to provide management of the City Hall and Park Project would be the most appropriate action. To that end, staff solicited requests for qualifications (RFQ) from program management firms and received 24 responses. The City staff selection committee reviewed and ranked each RFQ and established a list of seven finalists as follows:

Barnhart, Inc, (Heery Intl.),  
C.W. Driver  
Gafcon, Inc.  
Griffin Structures, Inc.  
Pinnacle One (Arcadis Co.)  
Traker Development  
Voit Development

The seven finalists were interviewed by the City Building Committee and C.W. Driver was selected as the best qualified firm to provide program management services.

In general, the proposed work scope includes managing all aspects of the project design and construction with special attention to schedule, cost and quality. C.W. Driver will perform as an extension of staff reporting to the Public Works Director. The work performed by C.W. Driver will occur in three phases with only Phase I work being covered by this contract.

### **Phase I – Pre-Design Management Services**

Phase 1 includes pre-design program management and coordination services through the start of the design phase of the Project. Such services include:

- Provide staff support, as required, to the City's Building Committee and City Hall Design Committee, concept development, public outreach, and general communications.
- Review, update and confirm with City Staff and the City's Building Committee existing City program information including the most current needs assessment.
- Review and understand the existing City Council adopted design guidelines, design parameters, codes, and requirements affecting this project.
- Coordinate and manage the activities of the City's design team including geotechnical, traffic, and EIR, and other related consultants.
- Assist the City in developing a Program Budget including all project cost such as usual and customary consultant/permit/fees soft cost, building construction, onsite and offsite mitigation cost, other indirect cost, outfitting with furniture and equipment, moving cost, financing cost, and any other cost that can be anticipated to be incurred in a public project of this scope and function.

### **Phase II - Design Management Services**

Phase II involves pre-construction management and administration services, including design management and coordination services for the project from conceptual design, schematic design, design development, and the production of construction documents through the issuance of a building permit. The Program Manager (PM) and its team will review and coordinate all design work on behalf of the City. Work scope in this phase includes:

- Coordinate and manage the City's design team in its delivery of Architectural and Engineering (A&E) services, including all required specialty consultants such as geotechnical, traffic, noise and civil engineering design with special emphasis placed on the following activities:
  - Addressing functional needs for the City Hall, Park and Parking Facility as defined in the City's project program.
  - Addressing the neighborhood context.
  - Coordinate all aspects of on-site improvements, all required off-site improvements, all on-site and off-site utilities, and any other applicable improvements.
  - Addressing the principles of sustainability during the design process as may be directed by the City.
  - Incorporation of depletable resource conservation, LEED, and operational efficiencies as requested by the City.

- Addressing the importance of design, drawing and specification all complying with applicable local and State codes and design standards.
- Coordinate the City's CEQA compliance and environmental approval process, and integrate into the project.
- Develop budgets and or cost estimates at each phase of the design process and recommend design modifications as necessary utilizing Value Engineering principles to seek to keep at or below the construction budget established for the Project.
- Provide periodic design and constructability reviews.
- Provide construction logistic studies including evaluating potential locations for construction trailers, layout area, material storage, construction staff parking and other required areas to facilitate construction within the Project site and identification of additional off-site locations if required.
- Develop and maintain overall Project schedules and manage the Project to ensure that timeframes for deliverables and processes prior to construction are met.
- Provide a quality check on the final construction document and specifications.
- Manage appropriate furniture, fixture and equipment bidding/procurement and installation.
- Prepare a Storm Water Pollution Prevention Plan (SWPPP), file a Notice of Intent (NOI) with the State Water Resources Control Board, and secure a Waste Discharger Identification (WDID) number.
- Assure incorporation (and respond to) all Building Official and other permitting agency comments as appropriate, and facilitate the permitting process.
- Secure City issued building permits and all other jurisdictional permits required to construct the Project.

### **Phase III – Construction Management Services**

Phase III includes comprehensive Construction Management services during construction and post-construction phases of the project including the installation of furnishings, fixtures, and equipment (FF&E) and coordination of move-in. Work scope in this phase includes:

- Managing the public bidding and award process in full compliance with the Calif. Public Contract Code.
- Providing full and complete construction administration, coordination and construction observation services during and following construction, including but not limited to the following:
  - ❖ Onsite administration and management
  - ❖ Coordination of all Project consultants under direct contract to the City
  - ❖ Project and construction cost management
  - ❖ Quality assurance, inspection, and quality control
  - ❖ Coordinate with the City's Building Inspectors
  - ❖ Dispute resolution
  - ❖ Submittal coordination
  - ❖ Management of Requests for Information (RFI)
  - ❖ Change order review and negotiations

- ❖ Manage construction materials testing, and specialty inspection services
- ❖ Provide schedule analysis and continuous updates
- ❖ Manage project close-out, including assuring the A&E team provides complete record (As-Built) drawings
- ❖ Construction punch-list management and completion
- ❖ Manage substantial and final completion processes, and project acceptance.
- ❖ Compile program warranties
- ❖ Deliver operations and maintenance manuals
- ❖ Coordinate the installation of FF&E and move in activities
- ❖ Manage final payment and project closeout for all consultants and contractors under direct contract with the City
- ❖ Coordinate warranty work for a period of up to one year

At this time, Staff recommends the proposed contract include only Pre-Design Phase I. Upon successful completion of Phase I, staff will negotiate an amendment to this contract to continue with Phase II, Design Management Services, of the project. Prior to the beginning of Phase III, Construction Management Services, with the goal of determining the most economically and efficient way to proceed with the construction of the Project addressing Project budget, schedule and control, the City and the PM will determine whether the construction of the Project shall be contracted under a Construction Management at Risk or General Contractor Agreement. The PM agreement will therefore be augmented or adjusted accordingly to incorporate the agreed upon method of construction.

The proposed fee for program management services for Phase I, Pre-Design/Concept, is \$223,600 with a \$10,000 allowance for reimbursables for a total cost not to exceed \$233,600 on a time and materials basis per the attached proposal and hourly rates.

Environmental Review:

Architectural and Engineering services are not projects as defined in the California Environmental Quality Act (CEQA) Implementing Guidelines. Staff is currently conducting a selection process to retain an EIR consultant who will prepare environmental documentation for the project.

Funding Availability:

There are sufficient funds available in the following account:

<u>Account Description</u>	<u>Account Number</u>	<u>Amount</u>
City Hall and Park Design	7410-C1002009	\$ 233,660
		<hr/>
		\$ 233,660

Submitted by:

  
Stephen G. Badum  
Public Works Director

Attachment: PSA with CW Driver

**PROFESSIONAL SERVICES AGREEMENT WITH  
C.W. DRIVER  
FOR CITY HALL AND PARK MASTER PLAN PROJECT -  
PROGRAM MANAGEMENT SERVICES**

**THIS AGREEMENT** is made and entered into as of this 13th day of January, 2009, by and between the **CITY OF NEWPORT BEACH**, a Municipal Corporation ("**City**"), and **C.W. DRIVER**, a California Corporation, whose address is 15615 Alton Parkway, Suite 150, Irvine CA 92618 ("**Consultant**"), and is made with reference to the following:

**RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City is planning to design and construct the new City Hall and Park Master Plan Project.
- C. City desires to engage Consultant to manage design and construction of the new City Hall and Park Master Plan Project ("**Project**").
- D. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.
- E. The principal member of Consultant for purposes of Project, shall be John Thornton, Vice President.
- F. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

**1. TERM**

The term of this Agreement shall commence on the above written date, and shall terminate on the 31st day of May, 2009 unless terminated earlier as set forth herein.

**2. SERVICES TO BE PERFORMED**

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference. The City may elect to delete certain tasks of the Scope of Services at its sole discretion.

### 3. TIME OF PERFORMANCE

Time is of the essence in the performance of services under this Agreement and the services shall be performed to completion in a diligent and timely manner. The failure by Consultant to perform the services in a diligent and timely manner may result in termination of this Agreement by City.

Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

3.1 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.2 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by either telephone, fax, hand-delivery or mail.

### 4. COMPENSATION TO CONSULTANT

City shall pay Consultant for the services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all work performed in accordance with this Agreement, including all reimbursable items (up to \$10,000.00) and subconsultant fees, shall not exceed **Two Hundred Thirty-Three Thousand, Six Hundred and Sixty Dollars and no/100 (\$233,660.00)** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.1 Consultant shall submit monthly invoices to City describing the work performed the preceding month. Consultant's bills shall include the name of the person who performed the work, a brief description of the services performed and/or the specific task in the Scope of Services to which it relates, the date the services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City staff.

4.2 City shall reimburse Consultant only for those costs or expenses specifically approved in this Agreement, or specifically approved in writing in advance by City. Unless otherwise approved, such costs shall be limited and include nothing more than the following costs incurred by Consultant:

- A. The actual costs of subconsultants for performance of any of the services that Consultant agrees to render pursuant to this Agreement, which have been approved in advance by City and awarded in accordance with this Agreement.
- B. Approved reproduction charges.
- C. Actual costs and/or other costs and/or payments specifically authorized in advance in writing and incurred by Consultant in the performance of this Agreement.

4.3 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

## 5. PROJECT MANAGER

Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated **William Hahn** to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

If Consultant is performing inspection or construction management services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. Consultant's cellular phone number will be provided to City.

## 6. ADMINISTRATION

This Agreement will be administered by the **Public Works Department**. Stephen G. Badum, Public Works Director, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his/her authorized representative shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

## **7. CITY'S RESPONSIBILITIES**

In order to assist Consultant in the execution of its responsibilities under this Agreement, City agrees to, where applicable:

- A. Provide access to, and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's work schedule.
- B. Provide blueprinting and other services through City's reproduction company for bid documents. Consultant will be required to coordinate the required bid documents with City's reproduction company. All other reproduction will be the responsibility of Consultant and as defined above.
- C. Provide usable life of facilities criteria and information with regards to new facilities or facilities to be rehabilitated.

## **8. STANDARD OF CARE**

- 8.1 All of the services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the services required by this Agreement, and that it will perform all services in a manner commensurate with community professional standards. All services shall be performed by qualified and experienced personnel who are not employed by City, nor have any contractual relationship with City. By delivery of completed work, Consultant certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws and the professional standard of care.
- 8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force in effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.
- 8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, or acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's work promptly, or delay or faulty performance by City, contractors, or governmental agencies.
- 8.4 The term Construction Management or Construction Manager does not imply that Consultant is engaged in any aspect of the physical work of construction contracting. Consultant shall not have control over or be in charge of and shall not be responsible for the project's design, City's project contractor ("Contractor"), construction means, methods,



techniques, sequences or procedures, or for any health or safety precautions and programs in connection with the work. These duties are and shall remain the sole responsibility of the Contractor. Consultant shall not be responsible for the Contractors' schedules or failure to carry out the work in accordance with the contract documents. Consultant shall not have control over or be responsible for acts or omissions of City, Design Engineer, Contractor, Subcontractors, or their Agents or employees, or of any other persons performing portions of the work.

#### **9. HOLD HARMLESS**

To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any work performed or services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

#### **10. INDEPENDENT CONTRACTOR**

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance or to

exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the services.

**11. COOPERATION**

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the work to be performed. City agrees to cooperate with the Consultant on the Project.

**12. CITY POLICY**

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

**13. PROGRESS**

Consultant is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

**14. INSURANCE**

Without limiting Consultant's indemnification of City, and prior to commencement of work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to City.

- A. Certificates of Insurance. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Insurance certificates must be approved by City's Risk Manager prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement.
- B. Signature. A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.
- C. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

D. Coverage Requirements.

- i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his or her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by City at least thirty (30) calendar days (10 calendar days written notice of non-payment of premium) prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.
- ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, contractual liability. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement, or the general aggregate limit shall be at least twice the required occurrence limit.
- iii. Automobile Liability Coverage. Consultant shall maintain automobile insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each occurrence.
- iv. Professional Errors and Omissions Insurance. Consultant shall maintain professional errors and omissions insurance, which covers the services to be performed in connection with this Agreement in the minimum amount of ten million dollars (\$10,000,000).

E. Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:

- i. The City, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant.
- ii. This policy shall be considered primary insurance as respects to City, its elected or appointed officers, officials, employees, agents

and volunteers as respects to all claims, losses, or liability arising directly or indirectly from the Consultant's operations or services provided to City. Any insurance maintained by City, including any self-insured retention City may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.

- iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- iv. The insurer waives all rights of subrogation against City, its elected or appointed officers, officials, employees, agents and volunteers.
- v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its elected or appointed officers, officials, employees, agents or volunteers.
- vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days (10 calendar days written notice of non-payment of premium) written notice has been received by City.

F. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claim made or suit instituted arising out of or resulting from Consultant's performance under this Agreement.

G. Additional Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

## **15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS**

Except as specifically authorized under this Agreement, the services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

## **16. SUBCONTRACTING**

City and Consultant agree that subconsultants may be used to complete the work outlined in the Scope of Services. The subconsultants authorized by City to

perform work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. The City is an intended beneficiary of any work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the City. Except as specifically authorized herein, the services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

#### **17. OWNERSHIP OF DOCUMENTS**

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents to City upon prior written request.

Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

#### **18. COMPUTER DELIVERABLES**

All written documents shall be transmitted to City in the City's latest adopted version of Microsoft Word, Adobe, and Excel.

#### **19. CONFIDENTIALITY**

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

#### **20. OPINION OF COST**

Any opinion of the construction cost prepared by Consultant represents his/her judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over

competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to City.

**21. RECORDS**

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

**22. WITHHOLDINGS**

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

**23. ERRORS AND OMISSIONS**

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this paragraph is intended to limit City's rights under the law or any other sections of this Agreement.

**24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS**

City reserves the right to employ other Consultants in connection with the Project.

**25. CONFLICTS OF INTEREST**

The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially

affected by the work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

## **26. NOTICES**

All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Stephen Badum, Public Works Director  
Public Works Department  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, CA, 92663  
Phone: 949-644-3311  
Fax: 949-644-3318

All notices, demands, requests or approvals from CITY to Consultant shall be addressed to Consultant at:

Attention: John Thornton, Vice President  
C.W. Driver  
15615 Alton Parkway, Suite 150  
Irvine CA, 92618  
Phone: 949-261-5100  
Fax: 949-261-5167

## **27. TERMINATION AND DISPUTE RESOLUTION**

### **27.1 TERMINATION**

In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default,

more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving seven (7) calendar days prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

## **27.2 STEPPED DISPUTE RESOLUTION**

In the event of a dispute arising out of or relating to this Agreement or the services to be rendered hereunder, besides a default as set forth in Section 27.1, the City and the Consultant agree to attempt to resolve such disputes in the following manner:

First, the parties agree to attempt to resolve such disputes through direct negotiations between the appropriate representatives of each party within ten (10) calendar days of being notified of the dispute.

Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining disputes by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties within thirty (30) calendar days after the failure to resolve the dispute by direct negotiation.

All parties agree that Consultant shall be required to submit a Tort Claim in conformance with the Tort Claims Act (Government Code Section 900 *et seq.*) and that this Section does not alter the Tort Claims Act requirements or toll any time limitations or statute of limitations set forth in the Tort Claims Act.

## **28. COMPLIANCE WITH ALL LAWS**

Consultant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.



of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

**30. INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

**31. CONFLICTS OR INCONSISTENCIES**

In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

**32. INTERPRETATION**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

**33. AMENDMENTS**

This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

**34. SEVERABILITY**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

**35. CONTROLLING LAW AND VENUE**

The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

**36. EQUAL OPPORTUNITY EMPLOYMENT**

Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the day and year first written above.

**APPROVED AS TO FORM:**

City Attorney  
for the City of Newport Beach

**CITY OF NEWPORT BEACH,**  
A Municipal Corporation

By: \_\_\_\_\_  
Mayor  
for the City of Newport Beach

**ATTEST:**

By: Leilani Brown,  
City Clerk

**CONSULTANT:**

By: \_\_\_\_\_  
(Corporate Officer)

**Title:** \_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Financial Officer)

**Title:** \_\_\_\_\_

Print Name: \_\_\_\_\_

**Attachments:** Exhibit A – Scope of Services  
Exhibit B – Schedule of Billing Rates

# C.W. Driver

BUILDERS SINCE 1919

15615 Alton Parkway  
Suite 150  
Irvine, CA 92618  
Fax 949.261.5167  
Telephone 949.261.5100

January 7, 2009

Mr. Steve G. Badum  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92658-8915

**Re: City Hall Master Planned Facility  
Program Management Services Fee Proposal**

Dear Steve:

C. W. Driver is please to submit our fee proposal to provide Program Management Services through the Concept Phase of the Newport Beach City Hall Master Planned Facility project for your consideration. We are excited about this opportunity to work with the City of Newport Beach and look forward to a very successful project.

Our proposed fee of \$223,660 is a Not-to-Exceed price for services through the Concept Phase of the Project as per the following:

CONCEPT PHASE EXECUTIVE SUMMARY		
Project / Program Management Oversight & Support	47%	105,460
Constructability Review	2%	5,560
Scheduling	2%	5,120
Estimating / Budgeting / Value Engineering	42%	93,168
BIM Manager	2%	5,280
Clerical	4%	9,072
<b>TOTAL</b>	<b>100%</b>	<b>\$223,660</b>

C. W. Driver proposes to provide full service program management services through the Concept Design Phase including:


- a. Develop conceptual estimate based upon Architect's concept design
- b. Management of City's Architect, Bohlin, Cywinski, Jackson (BCJ)
- c. Provide, maintain and distribute milestone preconstruction schedule
- d. Constructability Review
- e. Identify potential cost increasing elements of the project
- f. Provide potential value engineering suggestions



- g. Use of BIM technology for design analysis
- h. Facilitate needs assessment information
- i. Schedule and conduct internal team meetings
- j. Develop regular reporting methods for Owner
- k. Attendance to all required project meetings and committee meetings
- l. Facilitate information process to designated parties

Please know that we are committed to the total success of this project and look forward to work with the City of Newport Beach and the Design Teams.

Sincerely,



Bruce Curry  
Project Executive

C: John Thornton, Vice President of Operations  
Robert Shafer, Chief Estimator  
William Hahn, Program Manager  
City Attendees at today's meeting

Attachments: Exhibit B – CWD Management Rates & Reimbursables

**C.W. Driver**  
BUILDERS SINCE 1919

**C. W. DRIVER**

**MANAGEMENT RATES & REIMBURSABLES**

EFFECTIVE: JANUARY - JUNE, 2009- ~~2010~~

LABOR CLASSIFICATION	RATE
ACCOUNTING	84.00
ASSISTANT ESTIMATOR	82.00
ASSISTANT PROJECT MANAGER	139.00
ASSISTANT SUPERINTENDENT	109.00
BIM MANAGER	132.00
CARPENTER	102.00
CARPENTER FOREMAN	107.00
CLERICAL	81.00
CONSTRUCTABILITY REVIEWER	139.00
ESTIMATOR/COST ENGINEER	148.00
FIELD SUPERINTENDENT	157.00
GENERAL SUPERINTENDENT	195.00
IT SUPPORT	107.00
LABORER	84.00
LABORER FOREMAN	88.00
PROJECT ENGINEER	83.00
PROJECT EXECUTIVE / CHIEF ESTIMATOR	195.00
PROJECT (PROGRAM) MANAGER	165.00
SAFETY OFFICER	104.00
SCHEDULER	128.00
SENIOR ESTIMATOR	170.00
SENIOR PROJECT ENGINEER	128.00
SENIOR PROJECT MANAGEMENT	171.00
TRUCKING / DELIVERIES	69.00

Above rates apply to standard workweek hours. ~~Additional overtime costs will apply to hourly employees.~~

~~The above rates will be charged including an increase of 6% per year in subsequent calendar years.~~

Management Rates:

Management Rates Include all wages, workers compensation insurance costs, fringe benefits and payroll taxes, office supplies and expenses, mobile phone costs, project staff computers and software, main office overhead, and profit

Reimbursable Expenses:

Reimbursable expenses will be reimbursed at rate of cost plus 10%. Typical reimbursement costs consist of the following: Travel and subsistence, mileage, Additional Program Management Services not inclusive of this Agreement, Outside Consultants, printing costs, postage and mail delivery charges, Permits and Fees, Testing and Inspections, Payment and Performance Bonds